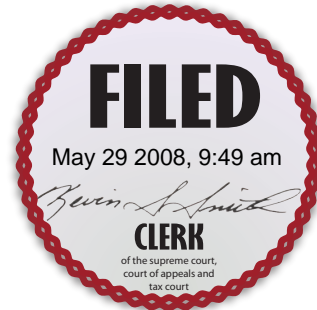


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MARLIN D. HOSTETLER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 44A05-0712-CR-730

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APPEAL FROM THE LAGRANGE CIRCUIT COURT

The Honorable J. Scott Vanderbeck, Judge

Cause No. 44C01-0608-CM-138

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**May 29, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Following a bench trial, Appellant-Defendant Marlin Hostetler appeals his conviction for Contributing to the Delinquency of a Minor, a Class A misdemeanor,<sup>1</sup> for which he received a suspended sentence of sixty days in jail. Upon appeal, Hostetler challenges the sufficiency of the evidence to support his conviction. We reverse and remand.

### **FACTS AND PROCEDURAL HISTORY**

On July 22, 2006, Hostetler held a party at his residence, 7590 South 400 West, near Topeka, Indiana. Hostetler, who was approximately twenty-five years old, lived at this address with his parents and siblings, one of whom was his twenty-four-year-old brother. Hostetler's parents were out of town at the time of the party. Hostetler invited approximately twelve people to the party, and his brother also invited several people. All of these invited guests were over twenty-one years old. Hostetler was aware that additional people, some of whom were under twenty-one years of age, also came to the party. Approximately fifty to two hundred people were present at the party. Hostetler and others drank alcohol at the party. Other attendees drank the non-alcoholic drinks of Pepsi and Red Bull.

I.L., who was seventeen years old at the time, was an underage attendee at the party. Her boyfriend, Sam Brill, was also at the party. Brill, who had brought alcohol to the party which he kept in a cooler in his truck, provided I.L. with alcohol by sharing his drink with her and by inviting her to help herself from his cooler.

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<sup>1</sup> Ind. Code § 35-46-1-8 (2006).

I.L.'s contact with Hostetler during the party involved seeing him there. I.L. was unsure whether she had talked to Hostetler. Hostetler knew that certain people at the party, including I.L., were not twenty-one years old, but he did not ask them to leave.<sup>2</sup> Hostetler claimed that he did not furnish anyone with alcohol, nor did he see anyone under age twenty-one drinking alcohol.

At approximately 6 a.m. on the morning of July 22, 2006, LaGrange County Sheriff's Deputy Randolph Mellinger arrived at Hostetler's residence to find approximately twenty vehicles in the driveway and approximately fifty people sleeping inside the vehicles. Deputy Mellinger additionally noticed beer cans and wine cooler and liquor bottles lying in the yard. I.L. was arrested and tested positive for alcohol.

On August 4, 2006, the State charged Hostetler with contributing to the delinquency of a minor for aiding, inducing, and causing I.L. to commit the delinquent act of consuming alcohol. Following a bench trial, the trial court found Hostetler guilty as charged and sentenced him to sixty days, all suspended, in the LaGrange County Jail. This appeal follows.

## **DISCUSSION AND DECISION**

Hostetler challenges the sufficiency of the evidence to support his conviction by arguing that the State failed to prove that he aided, induced, or caused I.L. to consume alcohol or that he knew I.L. was under age eighteen. Our standard of review for

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<sup>2</sup> There is ambiguity in the record as to whether Hostetler knew I.L. was in attendance at the party. Hostetler's testimony denying that he saw I.L. drink alcohol or encouraged her to do so, along with his admission that he knew I.L. was not twenty-one but did not encourage her to leave, leads to the reasonable inference that he knew she was at the party.

sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* Reasonable doubt is a doubt which arises from the evidence, the lack of evidence, or a conflict in the evidence. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998). A conviction may be sustained on circumstantial evidence if such evidence supports a reasonable inference of guilt. *Rush v. State*, 881 N.E.2d 46, 53-54 (Ind. Ct. App. 2008).

Indiana Code section 35-46-1-8 provides that a person who is at least eighteen years of age commits contributing to the delinquency of a minor if he knowingly or intentionally encourages, aids, induces or causes a person less than eighteen years of age to commit an act of delinquency.

At issue here is the extent of Hostetler's responsibility for I.L.'s consumption of alcohol while she was attending his party on his property. The State asserts that Hostetler contributed to I.L.'s delinquency merely by organizing and hosting the party where she drank alcohol, and by being aware that certain party attendees were under the age of twenty-one. The State is correct in its suggestion that a defendant need not actually hand

an alcoholic beverage to a minor and request that she drink it in order to sustain a conviction for contributing to the delinquency of a minor. *See Reeves v. State*, 161 Ind.App. 240, 244, 315 N.E.2d 397, 399 (1974).

In *Reeves*, this court upheld a conviction for contributing to the delinquency of a minor where a defendant was accompanied by a minor while obtaining beer and subsequently attended a party where the minor drank in his presence. 161 Ind.App. at 241-42, 315 N.E.2d at 398. Again, in the recent *Rush* case, this court similarly upheld a conviction for contributing to the delinquency of a minor where the defendant knew that her seventeen-year-old daughter was being visited by multiple peers, she was present when these visitors brought alcohol into her house, she had seen beer cans in the house, and she had spoken with her daughter and at least one of her peers after they had been drinking. 881 N.E.2d at 53. Noticeably, in both *Reeves* and *Rush*, the evidence demonstrated the defendants' knowledge of and implicit encouragement for the minors' consumption of alcohol.

Here, the record does not establish that Hostetler similarly knew of and encouraged I.L. to drink alcohol. The undisputed evidence in the record was that Hostetler did not invite I.L. to his party, that she obtained alcohol directly from Brill, not Hostetler, and that Brill brought his own alcohol and stored it in his truck. In addition, there is no evidence that I.L. drank alcohol in Hostetler's immediate presence or that he saw I.L. drink the alcohol.

Perhaps more importantly, unlike in *Reeves* and *Rush* where the minor's status did not appear to be at issue, here there is scant evidence demonstrating Hostetler knew that

I.L. was under the age of eighteen.<sup>3</sup> In a criminal prosecution, the State must prove every element of an offense, including statutorily specified ages. *See Staton v. State*, 853 N.E.2d 470, 471 (2006). The State may prove age through circumstantial evidence. *Id.* at 474. In *Staton*, the Indiana Supreme Court concluded that there was sufficient evidence that the defendant was eighteen based upon the fifteen-year-old victim's testimony that she "understood" that he was at least eighteen at the time of the offense and "imagined" he was four years older than she. *Id.* at 474-75. Here, in contrast, the only evidence that Hostetler knew I.L.'s age was her testimony that she and Hostetler had known each other for "probably" three years and his testimony that he knew I.L. was under age twenty-one. Tr. p. 22. Hostetler's knowledge that I.L. was under age twenty-one, even coupled with I.L.'s estimate regarding the length of their acquaintance, does not establish that Hostetler knew I.L. was under age eighteen at the time of the party. While Hostetler's decision to hold a large party and permit the unfettered consumption of alcohol on his premises without determining the age of each attendee is clearly irresponsible and reflects bad judgment, the evidence in this case is not sufficient to convict him of contributing to the delinquency of a minor.

The judgment of the trial court is reversed, and the cause is remanded with instructions to vacate Hostetler's conviction.

BARNES, J., and CRONE, J., concur.

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<sup>3</sup> Based upon questions at trial and closing argument, it appears that the prosecutor sought to prove only that I.L. was under age twenty-one. In order to prove Hostetler was guilty of contributing to the delinquency of a minor, the State was required to prove that I.L. was under age eighteen. *See Ind. Code* § 35-46-1-8.